

REMARKS

This amendment is in response to the Office Action dated June 17, 2005. By said Action, Claims 16–18 were withdrawn as being directed to a non–elected invention. The election of species requirement previously made by the Examiner were withdrawn. Claims 11, 19–21 were rejected under 35 U.S.C. 112 as being indefinite.

Claims 1–6, 9–15 and 21 were rejected under 35 U.S.C. 112 as failing to comply with the written description and enablement requirement. The Examiner held that Applicants had only met these requirements with respect to cultivars 1056 and 1057. Claims 7 and 8, directed to cultivars 1056 and 1057, were objected to and indicated as allowable if rewritten in independent form. Claims 1–6 and 9–15 were rejected under 35 U.S.C. 102 as anticipated by Levy et al (Agric. Food Chem 43:362–366, 1995).

By this amendment, Applicants have cancelled non–elected Claims 16–18, which will now be the subject of a separate divisional application. Corrections have been made to Claims 11, 19, and 20 to overcome the objections and rejections thereto.

Claim 1 has been amended to include the recitation of Claim 7 (cultivar 1056) and Claim 8 (cultivar 1057), putting it, along with the dependent Claims 2–6, 9–15 and 19–21, in allowable condition. New Claim 22 has been added, in a form similar to that of allowable Claim 1, and it too should be allowable.

The Examiner also required a declaration that the particular strains claimed (cv.1056 and cv.1057) had been deposited in accordance with the requirements of the Budapest Treaty. Attached herewith is a copy of ATCC form dated June 3, 2003 indicating receipt of Deposit of the strains cv.1056 and 1057 in accordance with the requirements of the Budapest Treaty on April 22, 2003, designated as Patent Deposit

Designation PTA-5147 and PTA-5148, respectively. Also attached is a Declaration by the Applicant stating that the requirements of the Budapest Treaty have been met, and are thus in compliance with the requirements of 35 U.S.C. 112 and 37 CFR 1.804 -1.809.

In view of the foregoing amendment and remarks, Claims 1-6, 9-15 and 19-22 are in allowable condition, and such action along with the allowance of the application is respectfully required.

Respectfully submitted,

A handwritten signature in cursive script, reading "Martin D. Moynihan".

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